

Notice of Allowability**Application No.**

10/665,029

Applicant(s)

WAYCOTT, WILLIAM

Examiner

KEITH O. ROBINSON

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments filed January 5, 2009.
2. ☒ The allowed claim(s) is/are 38,39,41,44,45,50,71-87,91-93, re-numbered as 1-26, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20090224.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/David H Kruse/
Primary Examiner, Art Unit 1638

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kristan Lansbery on February 20, 2009.

IN THE CLAIMS:

Claim 41 has been amended to read: Claim 41. (Currently Amended) An F_1 *Lactuca sativa* L. plant, or a part thereof, having as one or more parents a *Lactuca sativa* L. plant produced by [growing] crossing a *Lactuca sativa* line selected from the group consisting of PSR 6425; PSR 6595; and PSR 6032, a representative sample of seed deposited in the American Type Culture Collection under accession number PTA-3248.

Claims 88-90 have been cancelled.

New claim 91 has been added and reads: Claim 91. (New) A seed produced from a parent *Lactuca sativa* L. plant, wherein said parent *Lactuca sativa* L. plant is a plant of *Lactuca sativa* line PSR 6425, a representative sample deposited in the American Type Culture Collection under accession number PTA-3248.

New claim 92 has been added and reads: Claim 92. (New) A seed produced from a parent *Lactuca sativa* L. plant, wherein said parent *Lactuca sativa* L.

plant is a plant of *Lactuca sativa* line PSR 6595, a representative sample deposited in the American Type Culture Collection under accession number PTA-3248.

New claim 93 has been added and reads: Claim 93. (New) A seed produced from a parent *Lactuca sativa* L. plant, wherein said parent *Lactuca sativa* L. plant is a plant of *Lactuca sativa* line PSR 6032, a representative sample deposited in the American Type Culture Collection under accession number PTA-3248.

IN THE SPECIFICATION:

On page 2, paragraph 0006 and page 9, paragraph 00045, the phrase "Royal Horticultural Society Color Chart" has been amended to read: -- Royal Horticultural Society Colour Chart -- .

On page 26, replace paragraph 00081 with -- [00081] Lettuce, *Lactuca sativa* L. seeds of PSR 4559 have been placed on deposit with the American Type Culture Collection (ATCC), Manassas, Virginia, under Deposit Accession Number PTA-3249 on March 28, 2001. --

On page 26, replace paragraph 00082 with -- [00082] Lettuce, *Lactuca sativa* L. seeds of PSR 4570 have been placed on deposit with the American Type Culture Collection (ATCC), Manassas, Virginia, under Deposit Accession Number PTA-3247 on March 28, 2001. --

On page 26, replace paragraph 00083 with -- [00083] Lettuce, *Lactuca sativa* L. seeds of PSR 6425; PSR 6595 and PSR6032 have been placed on deposit with the American Type Culture Collection (ATCC), Manassas, Virginia, under Deposit Accession Number PTA-3248 on March 28, 2001. --

SUBSTANCE OF THE INTERVIEW

2. The Examiner spoke with Applicant's representative, Kristan Lansbery, February 20, 2009, regarding the above amendments to place the application in condition for allowance. Ms. Lansbery agreed to the above amendments.

REASONS FOR ALLOWANCE

3. The following is an examiner's statement of reasons for allowance: Applicant's claim cancellations and amendments have overcome the pending objections and/or rejections. In addition, the term "part thereof" is interpreted to not include F₂ plants.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONTACT INFORMATION

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEITH O. ROBINSON whose telephone number is (571)272-2918. The examiner can normally be reached Monday – Friday, 8:00 a.m. - 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keith O. Robinson
Examiner

/David H Kruse/
Primary Examiner, Art Unit 1638
27 February 2009